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In re Application of
BAMERT, Hans Joachim
Application No.: 09/856,390
Filing Date: 22 May 2001
Attorney Docket No.: BAMERT-1 PCT
For: DEVICE FOR HOLDING THE LOG
TRANSMITTER OF A BOAT
SPEEDOMETER

NOTIFICATION

This application is before the Office of PCT Legal Administration for consideration of matters arising under 35 U.S.C. §371.

BACKGROUND

On 17 October 2000, applicant filed international application PCT/EP00/10189. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 26 April 2001. The twenty month period for paying the basic national fee in the United States expired on 21 June 2001.

On 22 May 2001, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee and a preliminary amendment. The preliminary amendment amends the specification to "claim priority under 35 U.S.C. §120 of PCT/EP00/10189, filed on 17 October 2000."

On 13 July 2001, USPTO mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that the translation was defective for the reasons indicated on the attached Notice of Defective Translation (Form PCT/DO/EO/913). The Notice of Defective Translation indicated that the number of claims in the International Application and the number of claims in the translations were not the same.

On 13 September 2001, applicant filed "Response to Notification of Missing Requirements Under 35 USC 371," accompanied by fifteen claims in German and a translation of those claims.

On 10 October 2001, the Office mailed Notification of Defective Response (Form PCT/DO/EO/916) indicating that the current translation was defective as the number of claims in the International Application and the number of claims in the translation were not the same and that the processing fee for late furnishing of the translation and a translation of the application were required.

On 13 November 2001, applicant submitted "Response to Notification of Defective Response," accompanied by a translation.

On 05 December 2001, the Office mailed Notification of Defective Response (Form PCT/DO/EO/916) indicating that the current translation was defective because it was marked up.

On 05 June 2002, applicant submitted "Petition Under Section 711.03(c) - Section 2 and Response to Notification of Defective Response," accompanied by a translation and docket printouts.

DISCUSSION

Any intended filing of an international application as a national stage application must clearly and unambiguously be identified as such and must satisfy all of the conditions set forth in 35 U.S.C. 371(c). The official PTO Notice published in the Official Gazette at 1077 OG 13 entitled "Minimum Requirements for Acceptance of Applications Under 35 U.S.C. 371 (the National Stage of PCT)" states, in part, the following:

The Patent and Trademark Office is continuing to receive application papers which do not clearly identify whether the papers (1) are being submitted to enter the national stage of the Patent Cooperation Treaty (PCT) under 35 U.S.C. 371 or (2) are being filed as a regular national application under 35 U.S.C. 111.

* * *

If there are any conflicting instructions as to which sections of the statute (371 or 111) is intended the application will be accepted under 35 U.S.C. 111.

The transmittal letter (Form PTO-1390) filed on 22 May 2001 identified the application as "a filing under 35 U.S.C. 371." However, the transmittal letter (bottom margin) and the preliminary amendment claim benefit under 35 U.S.C. §120 to the PCT application. Applicant's benefit claim under §120 to the international application is inconsistent with a filing under U.S.C. §371. Since applicant has given conflicting instructions, the papers are considered filed under 35 U.S.C. §111(a).

CONCLUSION

For the above reasons, the petition submitted on 05 June 2002 is **DISMISSED AS MOOT**.

The Notification of Missing Requirements mailed on 13 July 2001 is hereby **VACATED**.

The Notifications of Defective Response mailed on 10 October 2001 and 05 December 2001 are hereby VACATED.


This application is accepted as an application filed under 35 U.S.C. §111(a) with a filing date of 22 May 2001.

Please direct any further correspondence with respect to this matter to the Commissioner of Patents and Trademarks, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Office of PCT Legal Administration.

This application is being forwarded to the National Stage Processing Branch of the International Division for processing in accordance with this decision, that is for (1) removal of the papers communicated from the International Bureau to the United States Patent and Trademark Office concerning international application PCT/EP00/10189, (2) correction of information in PALM (computer database) and (3) correction of fees. Afterwards, the application will be forwarded to the Office of Initial Patent Examination for processing as a national application filed under 35 U.S.C. §111(a) with a filing date of 22 May 2001.



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